

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC GASTON,

Defendant-Appellant.

UNPUBLISHED

September 11, 1998

No. 197556

Recorder's Court

LC No. 95-010278

Before: MacKenzie, P.J., and Whitbeck and G. S. Allen, Jr.*, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial conviction of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). The trial court sentenced defendant to 7-1/2 to 15 years in prison. We affirm.

Defendant argues that the trial court deprived him of his rights to due process and a fair trial by making improper comments to defense counsel and by improperly interfering with defense counsel's ability to make objections. Defendant also argues that the trial court's inappropriate comments about some of the evidence presented at trial deprived him of a fair trial. We disagree.

"While a trial court may question witnesses to clarify testimony or elicit additional relevant information, the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial." *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). "The test is whether the judge's questions and comments may have unjustifiably aroused suspicion in the mind of the jury concerning a witness' credibility and whether partiality quite possibly could have influenced the jury to the detriment of the defendant's case." *Id.* After a careful review of the trial court's alleged improper comments and questions, we conclude that the trial court's conduct was not partial and did not influence the jury to the detriment of defendant's case.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

We also find that even though the trial court abused its discretion in admitting the testimony of Katherine Ledbetter, the error was harmless as Ledbetter's testimony revealed the

same facts as shown by other competent testimony. *People v Miller*, 165 Mich App 32, 50; 418 NW2d 668 (1987), on remand 186 Mich App 660; 465 NW2d 47 (1991). Further, any error committed by the trial court in admitting the testimony of Officer Sana Putrus was harmless because the hearsay portion of his testimony revealed the same information as that provided by the victim's testimony. *People v Rodriquez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996). Therefore, it was cumulative evidence. Accordingly, the trial court did not engage in judicial misconduct and defendant was not deprived of due process and a fair trial.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ William C. Whitbeck

/s/ Glenn S. Allen, Jr.